IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1081 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

R R VANKAR

Appearance:

1. Special Civil Application No. 1081 of 2002

MR HARDIK C RAWAL for Petitioner No. 1

MR AV PRAJAPATI for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 06/03/2002

ORAL JUDGEMENT

1. On 27.2.2002, Mr. Prajapati learned advocate appearing for respondent - workman has sought some time on the ground that he has received the instructions in

the matter only two days back. With a view to see that cause of the respondent - workman is not prejudiced, the matter was adjourned to 6.3.2002. It is recorded on 27.2.2002 that the respondent - workman was served with the order of this Court on 8.2.2002, but for the reasons best known to him he did not engage an Advocate in time though, 'the rule was made returnable on 27.2.2002'. The rule was issued on 25.1.2002. Thus, it is clear that though the respondeat - workman had ample time to engage an Advocate and give him full instructions, he did not do the same. It was only two days before the day on which 'rule' was returnable he engaged learned advocate Mr. Prajapati who sought time saying that as he has received the instructions only two days back and he is yet to receive full instructions, in the interest of justice, the time was granted.

2. Today, when the matter was called out for final hearing, Mr. Prajapati learned advocate submitted that he could not receive further instructions or papers of departmental inquiry etc. he may be granted further time. There being no justification in the prayer for time made by Mr. Prajapati, the same is rejected. Mr. Prajapati submitted that it may be recorded that he could not seek further instructions because of the disturbed condition in the city of Baroda. As stated hereinabove, the rule was issued on 25.1.2002 returnable on 27.2.2002. The respondent workman though served on 8.2.2002 he did not engage an advocate or instructed him handing over all the papers. Disturbance in City of Baroda is only a coincident and as submitted by Mr. Raval the matter is not taken up today the business was change. He submitted that in view of the fact that almost before one month the process of this court is served. Therefore, there is no ground for granting time.

3. The matter is in a narrow compass. The respondent - workman was serving as conductor on the day of incident i.e. on 3.10.1995. He was on route of Chhotaudepur to Kanawant. The bus was checked and it was found that there were only three passengers in the bus. The fare was collected from these passengers, but tickets were not issued. As it normally happens in such cases the respondent - workman had to pur forward same defence. In this case it was contended that these passengers were in drunken condition and some quarrel regarding issuance of tickets was on. Therefore, he could not issue the tickets. It was contended on behalf of respondent workman by learned advocate Mr. Prajapati that the defence put forward by the respondent workman is worth accepting and no interference with the judgement and

award of the Industrial Court, Baroda is called for. Mr. Prajapati learned advocate appearing for the respondent workman submitted that the petitioner - Corporation has failed in proving the irregularities alleged against the respondent workman. They have not checked the cash on the spot. The respondent workman, in his statement taken on the spot, had stated that he is falsely implicated. He had not collected the fare and while he was in readiness of issuing tickets, checking had taken place at Jabala stand. He was not allowed to issue tickets. Mr. Prajapati learned advocate also submitted that the learned Judge of the Industrial Court was right in holding that, 'if at all any irregularity, against the respondent - workman is to be believed, the same is that of negligence only and it can not be said to be that of misappropriation'. Mr. Prajapati emphatically submitted that the defence of the respondent workman is required to be accepted in its true spirit. The passengers being in drunken condition, there was some quarrel about the issuance of tickets. These facts are not disproved by the petitioner Corporation. Same are rightly believed by the Industrial Court and no interference by this Court is called for.

4. Mr. H.C.Raval learned advocate appearing for petitioner - Corporation submitted that this is a clear case of misappropriation. He submitted that the Hon'ble the Supreme Court has held in the matter between State of Haryana and another Vs. Rattan Singh, reported in AIR 1977 SC 1512, that, "a bus conductor of a State Transport undertaking when charge sheeted for not collecting fares from certain passengers and when his guilt is established, simple termination of his services because of his long services and young age, it could not be said that merely because statements of passengers were not recorded by the Inspector of the flying squad, the order that followed was invalid. The evidence of the Inspector was some evidence which had relevance to the charge against the bus conductor : order of simple termination of services was valid."

Mr. Raval learned advocate for the petitioner Corporation also submitted that similarly ' evidence of reporter' in the present case was required to be relied upon. The submission that the petitioner Corporation was not able to disprove the defence of the respondent workman, is without any merit and deserves to be rejected in view of the aforesaid decision of the Hon'ble Apex Court.

5. Mr. Raval learned advocate also relied upon the

judgement of the Hon'ble the Supreme Court in the mater between Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) and Others Vs. Secretary, Sahakari Noukarara Sangha and Others, reported in (2000) 7 SCC 517, wherein the Hon'ble Apex Court, after taking into consideration several earlier judgements of its own, observed in para.7 and 8 as under :

Para.7

"In view of the aforesaid settled legal position, the High Court materially erred in confirming the directions given by the Labour Court in reinstating the respondent workman with 25% back wages. For giving the aforesaid direction, the Labour Court considered that there is no evidence regarding past misconduct by the employees and, therefore, it can be observed that they have rendered several years of services without any blemish and to some extent, there was lapse on the part of the management."

Para.8

"In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases."

6. Mr. Raval learned advocate also relied upon another judgement of the Hon'ble Supreme Court in the matter between Karnataka State Road Transport Corporation Vs. B.S.Hullikatti reported in (2001) 2 SCC 574, wherein the Hon'ble Supreme Court was pleased to observe in para.6 as under :

Para.6

"It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do

not collect any fare or the correct amount of fare."

7. Mr. Raval learned advocate submitted that in the present case the petitioner - Corporation, taking a lenient view, did not impose the extreme penalty of "economic death". The penalty of placing the respondent workman on his initial pay was imposed. Mr. Raval learned advocate submitted that interference with the punishment order of the petitioner Corporation by the Hon'ble Judge, Industrial Court, Baroda was unwarranted, in view of the aforesaid decisions of the Hon'ble the Apex Court. The learned Judge was pleased to observe that, "fact appeared to be correct that the conductor of not issuing tickets to the passengers." The fact of misappropriation ought to have been held as proved. Mr. Raval submitted that in the alternative assuming for the sake of argument that respondent workman had not collected the fare from the passengers, the same cannot exonerate respondent workman of his guilt, because the judgement of the Hon'ble the Supreme Court has held that, "it is the duty of the conductor to issue the tickets of correct denomination". Mr.Raval, learned advocate, submitted that, the fact that though there were only three passengers and they were not issued the tickets recorded by the Industrial Court. Then the only question which remains for consideration is, as to whether the defence put forward by the respondent workman is probable to shield his misconduct and irregularity, and the answer is "no".

8. The submissions of Mr. Raval are having enough force to be accepted. Having found substance in the submissions of Mr. Raval, learned advocate for the petitioner Corporation, petition is allowed. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi,J.)

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